

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:12-cv-282-RJC-DSC**

**STACY C. HARRELL,**

**Plaintiff,**

**v.**

**CITY OF GASTONIA,**

**Defendant.**

**ORDER**

**THIS MATTER** is before the Court on Defendant City of Gastonia's Motion to Dismiss for Failure to State a Claim and Supporting Memorandum (Doc. Nos. 4 and 5), Plaintiff Stacy C. Harrell's Response in Opposition to the Motion (Doc. No. 9), the Magistrate Judge's Memorandum and Recommendations (M&R) (Doc. No. 11), and Plaintiff's Objection to the M&R (Doc. No. 12). For the following reasons, the Court **ADOPTS** the recommendations of the Magistrate Judge and **GRANTS** the Defendant's Motions to Dismiss.

**I. BACKGROUND**

This action is the second that Plaintiff has brought against Defendant Gastonia based upon the same set of facts. In October 2007, Plaintiff brought suit in this Court alleging a violation under 42 U.S.C. § 1983 as well as actions for libel, blacklisting and intentional infliction of emotional distress. See Harrell v. City of Gastonia et. al., No. 3:07CV396H. In July 2008, Plaintiff filed an amended Complaint to correct deficiencies in the complaint. In May

2008, this Court partially dismissed Plaintiff's first lawsuit with prejudice. Harrell v. City of Gastonia et. al., No. 3:07CV396-H, 2008 WL 2139619 (W.D.N.C. May 20, 2008). In January 2009, this Court dismissed the remainder of the suit pursuant to a Rule 56 Motion for Summary Judgment. Harrell v. City of Gastonia, No. 3:07CV396-H 2009 WL 234064 (W.D.N.C. January 29, 2009). In August 2010, the Fourth Circuit Court of Appeals affirmed the grant of summary judgment. Harrell v. City of Gastonia, No. 09-1250, 2010 WL 3314567 (4<sup>th</sup> Cir. Aug. 24, 2010).

On May 4, 2012, Plaintiff filed suit alleging a deprivation of civil rights under 42 U.S.C. § 1983 as well as libel. Specifically, Plaintiff alleges that defendant retaliated against him after he refused to engage in illegal activities as a police officer by placing false information into his employment files and ultimately terminating his employment. These allegations also formed the basis of Plaintiff's prior lawsuit.

## **II. STANDARD OF REVIEW**

The Federal Magistrate Act provides that a district court "shall make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). A written objection to a magistrate judge's recommendation must identify the portion of the proposed findings or recommendations to which objections is made and state the basis for such objection. Opriano v. Johnson, 687 F.2d 44 (4th Cir. 1982). De novo review is not necessary where a party makes general or conclusory objections that do not direct the court to a specific error in the magistrate judge's proposed findings and recommendations. See United States v. Mertz, 376 U.S. 192 (1964).

### III. DISCUSSION

Undaunted by the dismissal of a prior suit in this Court based upon the same set of facts, Plaintiff has brought the instant suit. This Court has reviewed, and agrees with, the Magistrate Judge's recommendation that Plaintiff's claim is barred under the doctrine of res judicata. The earlier suit was decided on the merits, contained the same parties, and shared a "common nucleus of operative facts." See Pittson Co. v. United States, 199 F.3d 694, 704 (4th Cir. 1999).

Plaintiff did not provide specific objections to the M&R but incorporated objections made in his Motion to Dismiss, (Doc. No. 9) which was filed prior to the M&R and taken into consideration by the Magistrate Judge. This Court, therefore, does not find it necessary to address specific issues raised by the pre-emptive objections as they do not direct the Court to specific findings within the M&R and have already been taken into consideration by the Magistrate Judge.

Accordingly, finding no error in the Magistrate Judge's Recommendation, this Court **ADOPTS** the Magistrate Judge's Memorandum and Recommendation and **DISMISSES** all of the claims in Plaintiff's Complaint, (Doc. No. 1) with prejudice.

### IV. CONCLUSION

For the reasons stated above, this Court adopts the Magistrate Judge's Recommendations and **DISMISSES** all claims as precluded under the doctrine of res judicata.

It is **THEREFORE ORDERED** that Defendants respective Motions to Dismiss are **GRANTED**. The Clerk of Court is directed to close this case.

Signed: December 28, 2012



Robert J. Conrad, Jr.  
Chief United States District Judge

